

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 1:19-cv-160 Judge Keeley

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
AND BRIAN BOUCHER,

Defendants.

NOTICE OF REMOVAL

Please take notice that Defendants Under Armour, Inc. and Under Armour Retail, Inc. (collectively "Under Armour"), by counsel, Justin M. Harrison, Esq. and Grace E. Hurney, Esq. of Jackson Kelly PLLC, have removed this action from the Circuit Court of Harrison County, West Virginia, to the United States District Court for the Northern District of West Virginia at Clarksburg. In support of this Notice of Removal, Under Armour submits the following:

1. A civil action styled *Cynthia D. Pajak v. Under Armour, Inc., et al.*, Civil Action No. 19-C-183-3, was commenced in the Circuit Court of Harrison County, West Virginia, on or about July 19, 2019. A copy of the Circuit Court's file, including Plaintiff's original Complaint, is attached hereto at Exhibit A. These papers constitute all process, pleadings, and orders served in the state court action.

2. Plaintiff's Complaint was served upon: (1) Under Armour, Inc. via the West Virginia Secretary of State on or about July 19, 2019; and (2) Under Armour Retail, Inc. via registered agent on August 2, 2019.

3. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), because less than 30 days have passed since Under Armour, Inc. received the Complaint.

4. None of the Defendants have filed or served a responsive pleading in this case.

5. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332, and the action is removed pursuant to 28 U.S.C. § 1441 because (1) the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs, and (2) there is complete diversity of citizenship between Plaintiff and the Defendants.

6. The United States District Court for the Northern District of West Virginia, Clarksburg Division, is the appropriate venue for removal of Plaintiff's state court action pursuant to 28 U.S.C. § 1441, which permits any civil action brought in any state court in which the district courts of the United States have original jurisdiction to be removed to the District Court of the United States for the district and division embracing the place where the state action is pending.

7. In her Complaint, Plaintiff asserts at least four separate causes of action against the Defendants. The First Count is a common law cause of action for retaliatory discharge in violation of public policy. (*See* Exhibit A, Complaint ¶¶ 44–52). The Second Count is a statutory cause of action for retaliation in violation of the West Virginia Human Rights Act (the “WVHRA”), W.Va. Code § 5-11-9. (*Id.* ¶¶ 53–59). At her Third Count, Plaintiff seeks relief under various common law and statutory theories of recovery. (*Id.* ¶¶ 60–66). Finally, Count Four is, ostensibly, a cause of action for intentional infliction of emotional distress. (*Id.* ¶¶ 67–72).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

8. Section 1332(a) requires that the amount in controversy in diversity actions exceed \$75,000, exclusive of interest and costs. *See* 28 U.S.C § 1332(a). To establish the jurisdictional amount, a removing party is only required to show that it is more likely than not that the amount in controversy exceeds \$75,000. *See McCoy v. Erie Ins. Co.*, 147 F. Supp. 2d 481, 489 (S.D.W. Va. 2001); *see also* 28 U.S.C. § 1446(c)(2)(B) (“[R]emoval of the action is proper on the basis of an amount in controversy . . . if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds [\$75,000].”).

9. The amount in controversy in this case readily exceeds \$75,000. Plaintiff does not quantify the sum of the damages that she seeks in her Complaint; however, Plaintiff does identify at least three measures of recovery and she ascribes monetary value to each of those. For example, Plaintiff alleges that she earned \$187,460 in base salary for 2018, and she makes oblique references to a bonus opportunity of \$52,489 and a stock value of \$50,000. (Complaint ¶ 37). Plaintiff alleges that her non-economic damages will be “very substantial,” and she is seeking punitive damages. (*Id.*). Plaintiff also seeks “substantial attorneys’ fees, expenses, and expert witness fees” (*Id.* ¶ 39), as well as additional compensation for any “lump sum award” and loss of social security benefits. (*Id.* ¶ 40). Finally, Plaintiff claims that she is entitled to “past and future lost income and benefits, consequential damages, and emotional distress.” (*Id.* ¶¶ 50, 57, and 63).

10. The WVHRA allows successful plaintiffs to recover “back pay or any other legal or equitable relief as the court deems appropriate.” *See* W. Va. Code § 5-11-13(c). Additionally, W. Va. Code § 5-11-13(c) authorizes the recovery of front pay and punitive damages. *See Haynes v. Rhone-Poulenc, Inc.*, 521 S.E.2d 331, 345–48 (W. Va. 1999); *Dobson*

v. E. Associated Coal Corp., 422 S.E.2d 494, 501 (W. Va. 1992); *Castell v. Consolidation Coal Co.*, 383 S.E.2d 305, 311 (W. Va. 1989).

11. Plaintiff's claims for lost wages, punitive damages, and attorneys' fees satisfy the jurisdictional amount. Plaintiff alleges that her employment was terminated on December 10, 2018. (*See* Complaint ¶ 8). As of the date of removal, Plaintiff seeks back wages spanning more than eight months. As Plaintiff alleges, her annual base salary at the time of her employment separation was \$187,460, or approximately \$15,621 per month. Eight months of lost wages equals nearly \$125,000. Accordingly, Plaintiff's specific pleas for back wages alone satisfies the jurisdictional amount necessary for diversity.

12. As noted above, Plaintiff also seeks recovery of front pay. Front pay damages are a form of compensatory damages and are calculated to put the former employee in the same economic position that the employee would have enjoyed had the employee not been discharged. *See Peters v. Rivers Edge Min., Inc.*, 680 S.E.2d 791, 814 (W. Va. 2009). Because Plaintiff's salary at the time of her termination was more than \$187,000, it is likely Plaintiff's plea for front pay alone satisfies the statutory amount in controversy of \$75,000.

13. Plaintiff also seeks punitive damages. The Court should consider Plaintiff's claim for punitive damages when "determining the amount in controversy unless it can be said to a legal certainty that plaintiff cannot recover punitive damages in the action." *Mullins v. Harry's Mobile Homes, Inc.*, 861 F. Supp. 22, 24 (S.D.W. Va. 1994) (citing *Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238 (1943)). Other plaintiffs pursuing relief under the WVHRA for alleged discrimination have, in the past, obtained sizeable punitive damage awards. *See, e.g., Constellium Rolled Prods. Ravenswood, LLC v. Griffith*, No. 13-1084, 2014 WL 5315409, at *6 (W. Va. Oct. 17, 2014) (affirming \$250,000 punitive damage award to WVHRA, gender discrimination Plaintiff); *W. Va. Am. Water Co. v. Nagy*, No. 101229, 2011 WL 8583425,

at *4 (W. Va. June 15, 2011) (affirming \$350,000 punitive damage award to WVHRA, age discrimination Plaintiff); *Peters*, 680 S.E.2d at 823–24 (affirming \$1,000,000 punitive damage award to WVHRA, retaliatory discharge Plaintiff).

14. Plaintiff also seeks attorneys' fees and costs. A claim for attorneys' fees is properly included in the amount in controversy where a statute expressly allows the payment of such fees. *Francis v. Allstate Ins. Co.*, 709 F.3d 362, 368 (4th Cir. 2013). The WVHRA expressly allows the payment of attorneys' fees. See W. Va. Code § 5-11-13(c). Both state and federal courts have awarded attorneys' fees under section 5-11-13(c). See *Muovich v. Raleigh Cty. Bd. of Educ.*, 58 F. App'x 584, 591 (4th Cir. 2003) (affirming award of \$260,000 in attorneys' fees and costs in context of claim for disability discrimination under WVHRA); *Dobson*, 422 S.E.2d at 502 n.16 (affirming \$94,887.05 in attorneys' fees and costs in context of claim for age discrimination under WVHRA). In light of fee awards in other cases under the WVHRA, Plaintiff's claim for attorneys' fees and costs, standing alone, satisfies the total amount in controversy. See *Mullins*, 861 F. Supp. at 24 (noting that in determining amount in controversy, "[t]he court . . . is not required to leave its common sense behind.").

15. Although the Complaint does not demand a specific sum for damages, the Court "may look to the entire record before it and make an independent evaluation as to whether or not the jurisdiction amount" is satisfied. *Adkins v. Wells Fargo Fin. W. Va., Inc.*, 2009 WL 1659922 (S.D.W. Va. June 15, 2009). "[T]he amount in controversy is what the plaintiff claims to be entitled to or demands." *Scaralto v. Ferrell*, 2011 WL 5966349 (S.D.W. Va. Nov. 29, 2011) (citations omitted). As set forth above, Plaintiff's claim for back wages alone satisfies the amount in controversy. She has asserted other measures of recovery that easily result in alleged damages exceeding \$500,000.

DIVERSITY OF CITIZENSHIP

16. Citizenship of the parties is determined by their citizenship status at the commencement of the action. 28 U.S.C. § 1332(d)(7).

17. At the time of the commencement of this action, Plaintiff is an individual residing in the State of West Virginia and is therefore a citizen of West Virginia for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441. (*See* Complaint ¶ 1).

18. A corporation is a citizen of any state where it is incorporated and where its principal place of business is located. 28 U.S.C. § 1332(d)(7).

19. A corporation's principal place of business is determined by the "nerve center" test, which looks to where the corporation maintains its corporate headquarters and where the corporation's officers direct, control, and coordinate the corporation's activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 90–94 (2010).

20. Defendants Under Armour, Inc. and Under Armour Retail, Inc. are corporations established under the laws of Maryland with their principal places of business located in the State of Maryland. Accordingly, Defendants Under Armour, Inc. and Under Armour Retail, Inc. are citizens of Maryland for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441. (*See* Declaration of Loren Pearl, attached as Exhibit B).

CONSENT OF ALL DEFENDANTS TO REMOVAL

21. There are three named defendants in this action: (i) Under Armour, Inc.; (ii) Under Armour Retail, Inc.; and (iii) Brian Boucher. This Notice of Removal has been filed on behalf of Defendants Under Armour, Inc. and Under Armour Retail, Inc. Defendant Boucher (a New Hampshire resident), by counsel, Scott Kaminski, Esq. of Kaminski Law, PLLC, has advised the undersigned that he consents to the removal of this action to the United States District Court for the Northern District of West Virginia. *See Mayo v. Bd. of Educ. of Prince*

George's Cty., 713 F.3d 735, 742 (4th Cir. 2013) (“[A] notice of removal signed and filed by an attorney for one defendant representing unambiguously that the other defendants consent to the removal satisfies the requirement of unanimous consent for purposes of removal.”)

CONCLUSION

22. Under Armour removes this case to federal court pursuant to 28 U.S.C. § 1332 because there is complete diversity among the parties, and the amount in controversy readily exceeds \$75,000.

23. Under Armour reserves the right to amend or supplement the Notice of Removal.

24. By filing the Notice of Removal, and relying upon Plaintiff's allegations and claims, Under Armour does not admit or concede liability to Plaintiff, and reserves all defenses that are available.

25. Upon filing this Notice of Removal, Under Armour will provide written notice to Plaintiff and file a copy of the Notice of Removal with the Clerk of the Circuit Court of Kanawha County, West Virginia.

Respectfully submitted this 19th day of August, 2019.

**UNDER ARMOUR, INC. and
UNDER ARMOUR RETAIL, INC.**

By Counsel

/s/ Justin M. Harrison

Justin M. Harrison, Esq. (WVSB #9255)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. _____

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
AND BRIAN BOUCHER,

Defendants.

CERTIFICATE OF SERVICE

I, Justin M. Harrison, counsel for Under Armour, Inc. and Under Armour Retail, Inc., do hereby certify that the foregoing **Notice of Removal** was electronically filed with the Clerk of the Court using the CM/ECF system, on this 19th day of August 2019. The undersigned further certifies that service of the foregoing **Notice of Removal** was made this 19th day of August 2019 upon counsel of record by mailing a true and exact copy of the same in a properly stamped and addressed envelope to the following:

Robert M. Steptoe, Jr.
Larry J. Rector
Allison B. Williams
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, West Virginia 26330
Counsel for Plaintiff

Scott Kaminski
Kaminski Law, PLLC
Post Office Box 3548
Charleston, West Virginia 25335-3548
Counsel for Defendant Brian Boucher

/s/ Justin M. Harrison

Justin M. Harrison, Esq. (WVSB #9255)

CASE NO. 19-C-183

OPENED 7/16/2019

JUDGE... JAMES A. MATISH

PLAINTIFF. CYNTHIA D. PAJAK
VS DEFENDANT. UNDER ARMOUR INC.

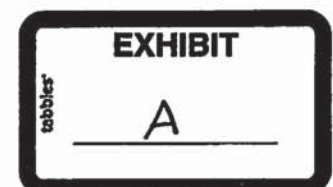
PRO ATTY.. LARRY J. RECTOR
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001	7/16/19	CCIS, Complaint, Summons thru SOS to Under Armour Inc w/30	
00002	7/16/19	day return, Summons given to atty for service to Under	
00003	7/16/19	Armour Retail Inc and Brian Boucher.	cls
00004	7/22/19	Summons and complaint accepted 7-18-19 by SOS for Under	
00005	7/22/19	Armour Inc.	ah
00006	8/01/19	Proof of service of complaint, CCIS, summons to B.Boucher	
00007	8/02/19	7/24/19 /s/ R. Bertheim, process server	djs
00008	8/02/19	Proof of service of complaint, CCIS, summons to T. Sippel	
00009	8/02/19	7/30/19 /s/ L. Jones	djs

State of West Virginia
County of Harrison, Circuit and Family Court
I, Albert F. Marano, Clerk of said county and in said state,
do hereby certify that the foregoing is a true copy from the
records of said court given under my hand and seal this

15 day of Aug 20 19
By Albert F. Marano nw
Deputy Clerk



through the use of the
same, which has been determined to be a
false and misleading statement, and the
same has been found to be a violation of the
law.



IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 2019-C-

19-C-183-3

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

COMPLAINT

NATURE OF SUIT

FILED IN 15TH
CIRCUIT COURT
2019 JUL 16 A 9:41

This suit arises from an unfortunate set of circumstances that culminated in Defendants' creation of a hostile work environment and discharge of Plaintiff Cynthia D. Pajak in retaliation for her reporting of inappropriate workplace conduct. Under Armour's highest level of management has been aware of the existence of a male dominated culture and tolerance for a sexually hostile work environment at Under Armour at least since a November 5, 2018 exposé in *The Wall Street Journal*. Even after becoming aware of the inappropriate conduct and behavior as reported in *The Wall Street Journal* article, Under Armour management has continued to show a complete lack of interest in undertaking any investigation of such conduct or implementing prompt, corrective remedial actions as required by law. This case is a classic example of corporate inaction in the face of overwhelming evidence that a supervisor has simply gone too far. Even after being provided more than sufficient facts revealing a culture and environment hostile to women, which should have prompted Human Resources to engage in a sincere good faith investigation, Under Armour simply ignored those facts until finally the facts forced Under Armour into a position where it had to act. Unfortunately, that action was too late for Ms. Pajak

who suffered a retaliatory and wrongful discharge as a result of her efforts to do the right thing by raising to her supervisors and bosses conduct that required under the applicable law that Under Armour undertake some form of action. That action was never taken. Rather, Defendant Boucher placed Ms. Pajak on a pretextual Performance Improvement Plan and ultimately terminated her employment. Mr. Boucher continued his inappropriate conduct until ultimately he left Under Armour's employment in 2019. Sadly, it was too late for Ms. Pajak. Thus, allowing the male dominated culture to go unchanged despite Kevin Plank's public statements to the contrary. Just as concerning is that Under Armour's Human Resources Department was well aware of all of the facts as alleged in this Complaint.

PARTIES

1. ***Plaintiff.*** The following is the Plaintiff in this lawsuit:
 - a. **Cynthia D. Pajak** is an individual residing in Bridgeport, West Virginia.
2. ***Defendants.*** This lawsuit is filed against the following Defendants:
 - a. **Under Armour, Inc. ("UA")** is, under information and belief, a duly formed corporation licensed and registered to do business in West Virginia, and may be served through its agent for service, at this Defendant's designated notice of process address in West Virginia;
 - b. **Under Armour Retail, Inc. ("UA Retail")** is, upon information and belief, a duly formed corporation and may be served through its agent for service, at this Defendant's designated notice of process address in West Virginia (UA and UA Retail are collectively referred to as "Under Armour");

- c. **Brian Boucher** ("Boucher") is believed to be a resident of New Hampshire, and may be served through the West Virginia Secretary of State at his work or residence address in New Hampshire.

JURISDICTION AND VENUE

- 3. This lawsuit is brought for:
 - a. Wrongful discharge under *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978) (where employer's discharge of employee violates a substantial West Virginia public policy, the discharge may be actionable);
 - b. Violations of the West Virginia Human Rights Act of 1967, W. Va. Code § 5-11-1 *et seq.* (1998);
 - c. Negligent hiring, supervision and retention; and
 - d. Intentional infliction of emotion distress/tort of outrage.
- 4. The employment relationship at issue in this lawsuit, which gave rise to the claims asserted in this Complaint, occurred and arose in Bridgeport, Harrison County, West Virginia. Many of the acts complained of occurred in West Virginia or through communications in West Virginia.
- 5. Defendants UA, UA Retail, and Boucher all conducted regular and substantial business at times material to this case in Harrison County, and Plaintiff's office where she worked for Defendants is located in Bridgeport, in Harrison County, West Virginia.
 - a. Boucher, from Maryland, made numerous phone calls to Ms. Pajak in Bridgeport, West Virginia. Additionally, there were regular phone calls involving regional directors, including Ms. Pajak.

- b. Boucher sent texts to Ms. Pajak at her West Virginia home office.
- c. Boucher sent numerous emails to Ms. Pajak at her West Virginia home office.
- 6. At all times material to this lawsuit, Ms. Pajak, Plaintiff, worked for Defendants in her home office location in Bridgeport, Harrison County, West Virginia.
- 7. Plaintiff's damages are in excess of the minimum jurisdictional limit of this Court.

FACTS

Background

- 8. Plaintiff Cynthia Pajak was hired by Under Armour, Inc., in November 2012.
- 9. Ms. Pajak was a Regional Director – East and Canada and continued to work in that position until she was discharged on December 10, 2018.
- 10. Brian Boucher occupied the position of Head of Stores – NA and Global Retail Operations and had been in that position since August 2018. He was Ms. Pajak's direct boss and supervisor when she was wrongfully terminated on December 10, 2018. In that position:
 - a. Boucher had managerial and supervisory authority over Ms. Pajak.
 - b. Boucher had the authority to direct the terms and conditions of Ms. Pajak's day-to-day employment.
 - c. Boucher had the authority to fire Ms. Pajak, either individually or in combination with other persons.
 - d. Boucher aided and abetted Under Armour and/or Under Armour Retail in the unlawful conduct described below.
- 11. **Opposition to unlawful conduct under the West Virginia Human Rights Act.** Ms. Pajak opposed conduct by Defendants which she in good faith believed constituted

violations of the West Virginia Human Rights Act, and other substantial public policies of the State of West Virginia.

12. **Participation in Protected Activity.** Ms. Pajak participated and supported a complaint by several other female employees, who complained to management that they were being subjected to a hostile work environment and other forms of gender discrimination.

13. Ms. Pajak has been the victim of a retaliatory discharge because she reported inappropriate conduct in the workplace that constituted a work environment that was hostile towards women. Rather than investigate Ms. Pajak's reports and take prompt corrective action as required by law, Ms. Pajak's boss embarked on a pretextual course of action to fire her. The salient facts are set forth below. Additional facts will be revealed in discovery.

14. Ms. Pajak was earning a substantial salary plus the opportunity to earn a significant annual bonus and stock options. All of this was taken away from her because she did not embrace the male dominated culture at Under Armour. This culture is not limited to Ms. Pajak's Region but rather it is a culture that pervades the whole of Under Armour.

15. On January 24, 2018 at 11:31 a.m., ReaiJah Livelsberger, District Manager, sent Ms. Pajak a text that said, "I need to tell you something semi serious at some point today." She went on to say it had to do with inappropriate workplace behavior that could result in termination. Ms. Pajak asked for more details which Ms. Livelsberger provided via text. Ms. Livelsberger stated that two District Managers, Brendan Costigan and Joey McKenna, made the team in Clarksburg, MD outlet center feel uncomfortable. Joey McKenna took off his shirt and acted like he was doing a striptease. Brendan Costigan was making comments about the Director of Visual Merchandising, Vicki Eyland's appearance, stating she was hot and he wanted to be her boyfriend. These comments were made in front of several teammates in the Clarksburg, MD

Under Armour outlet, as well as members of the visual merchandising team from UA's corporate office.

16. Ms. Pajak immediately asked Ms. Livelsberger to have Miranda Delaney, the store manager of the Clarksburg location, write a statement that she witnessed this behavior. On January 25, 2018, at 12:38 p.m., Ms. Pajak reached out to Joey McKenna's supervisor, Tara Stewart, the Regional Director for the West Coast. Ms. Pajak felt it was important that she was aware of this behavior.

17. Ms. Pajak felt that it was her responsibility to also contact her superior with the allegations. On January 26, 2018, at 10:21 a.m., Ms. Pajak texted her boss, Brian Boucher, Head of Stores of North America, stating that she needed to connect with him. He responded he couldn't speak and could only text. Ms. Pajak went on to text him the details that were provided to her by Ms. Livelsberger. Mr. Boucher's response was to ask if it was just drama, and all playful? Ms. Pajak was not in a position to answer that as she was not physically present but she did ask those that did witness the behavior to provide written statements. Ms. Pajak felt as if Mr. Boucher wanted to minimize the issue and he asked her to move on.

18. On January 26, 2018, at 2:06 p.m., Ms. Pajak had her weekly "touch base" with Jocelyn Carpenter, SR Manager of Human Resources for the East Coast and Canada. During this touch base, Ms. Pajak also informed Ms. Carpenter of the incident in Clarksburg, MD, as she was not certain if the written statements had been completed. On February 16, 2018, at 10:47 a.m., Ms. Pajak sent Ms. Carpenter a text asking if there were any additional conversations around Mr. Costigan's behavior with Vicki and she said no, that Vicki didn't want to make it a big deal so we shouldn't mention it.

19. On April 24, 2018, ReaiJah Livelsberger reached out to Ms. Pajak again about pictures posted on Yammer, the internal social media site for Under Armour employees. In these pictures Joey McKenna was posing for a body building competition in what appears to be just a speedo. On May 1, 2018, Ms. Pajak contacted Brian Boucher to inform him that one of Joey McKenna's peers was once again uncomfortable with questionable sexual behavior. He told Ms. Pajak that he felt that the female employee, ReaiJah, was overreacting and that there was no issue to discuss.

20. Then in early June 2018 a series of events made Ms. Pajak conclude that she was being set up for termination. In September 2018, Boucher put her on a performance improvement plan, based on false and exaggerated criticisms, and applying unreasonable and unachievable expectations, all as discussed more fully below.

21. On June 13, 2018, during travel in the Mid-Central market, Ms. Pajak also discussed with Shea Louie, Director of Global Store Operations, the concerns with the most recent Yammer post concerning Joey McKenna. Ms. Louie did agree that it was not appropriate and that she would elevate the concerns.

22. On June 12, 2018, Mr. Boucher delivered Ms. Pajak's "Half Time Huddle" and never raised any concerns with Ms. Pajak's performance. Just nine days later, on June 21, 2018, at 4:30 p.m., Brian Boucher, unexpectedly and with no warning, called Ms. Pajak saying that he would like her to make an offer on her terms to leave Under Armour. This occurred with no documentation or any previous conversation regarding any dissatisfaction with Ms. Pajak's job performance. Mr. Boucher called Ms. Pajak back later that same night at 9:44 p.m., during that call Mr. Boucher was pushing Ms. Pajak to make a decision to leave the company. Ms. Pajak had absolutely no intention of leaving her position and would not consider doing so. Ms. Pajak

will prove that was the beginning of Mr. Boucher's plan to work her out of the organization because of the concerns that she was escalating over inappropriate workplace conduct.

23. On June 22, 2018, at 10:00 a.m., Ms. Pajak called Jim Toner (Human Resources) and discussed the calls she received the day before from Mr. Boucher. Mr. Toner said that he did not understand where the "disconnect" was. It was clear that Mr. Boucher had not discussed his "plan" with Human Resources prior to calling Ms. Pajak on June 21st to tell her that she needed to consider the terms under which she would leave the company. Ms. Pajak was not interested in leaving Under Armour so she just kept on doing her job. And she did it very well.

24. On June 25, 2018, at 7:10 p.m., after talking with Jim Toner, Mr. Boucher called Ms. Pajak again. On this call Mr. Boucher stated that he wanted Ms. Pajak to develop an action plan and he said to Ms. Pajak, "I'm going to leave it in your hands." Again, Mr. Boucher provided no guidance as to Ms. Pajak's shortcomings or issues to correct in her future performance. On July 6, 2018, Mr. Boucher made the comment to Ms. Pajak that Under Armour was an "at-will employer and that at any point they can tell her that they do not need her anymore." During this same conversation, Mr. Boucher referenced the fact that Ms. Pajak had spoken to Human Resources.

25. On September 10, 2018, Mr. Boucher put Ms. Pajak on a performance improvement plan ("PIP"). The PIP had no objective performance metrics to be judged during the PIP period. Ms. Pajak sent Mr. Boucher an e-mail noting that the PIP was entirely subjective and there were no objective metrics to evaluate whether she had satisfied the PIP upon its conclusion. Mr. Boucher responded by stating, "As for the PIP being subjective, your opportunities are specific to your leadership and how you are leading the team and the business, not improving specific metrics. The objective part is whether or not you are

demonstrating the changes in your leadership behaviors. There are many ways you can demonstrate that these behaviors are taking place. . . . I don't have specific actions that you need to do to demonstrate them, this would be for you to decide as a Director in the region." Mr. Boucher also stated that he would have "routine check-ins" with Ms. Pajak during the PIP period, however, after the PIP was implemented her boss met with her one time and that was scheduled at Ms. Pajak's request. During the PIP period, Mr. Boucher never provided her with any guidance. Ms. Pajak also questioned the PIP period as it was only 60 days and she understood that the typical period used by Under Armour in its PIPs was 90 days. Mr. Boucher responded stating, "As for your first question, 60 days is the new Under Armour organizational best practice." Early on in the PIP period, after Ms. Pajak returned to work following a scheduled surgery, Mr. Boucher told her that she was never coming off the PIP.

26. On November 5, 2018, the Wall Street Journal published an article titled, "Under Armour's #METOO Moment: No more Strip Clubs on Company Dime." In response to the WSJ article, Founder and CEO Kevin Plank pledged to improve the company's culture in an open e-mail sent to all of UA's employees across the globe. See WSJ, "Under Armour CEO Plank Pledges to Improve Company's Culture – Comments follow a Wall Street Journal article on treatment of female employees" (Nov. 27, 2018 by Drew Fitzgerald).

27. The Wall Street Journal article is only part of the story. There is much that remains untold. The Executive Departures in 2018 only highlight the culture at Under Armour that fostered and allowed inappropriate workplace behavior to go unchecked.

28. On November 16, 2018, Jim Toner (Human Resources Business Partner), Brian Boucher, Tara Stewart, Megan McClain (Senior Human Resources Manager), Ms. Pajak and all District Managers were on a call the express purpose of which was to discuss the Wall Street

Journal article. The call was an open forum to address any concerns and allow the District Managers to voice their concerns. Within 5 minutes of the start of the call, Joey McKenna spoke up and said he thought the article was funny and down played the concerns that were brought up in the article. Tara thanked Mr. McKenna for his comments. Immediately following the call, Ms. Livelsberger reached out to Ms. Pajak via text concerning Mr. McKenna's comments. On November 27, 2018, during Ms. Pajak's bi-weekly touch base with Tammy Romero, District Manager, Ms. Romero also brought up the concerns with Mr. McKenna's comments. She also voiced her concern that it was not immediately addressed on the call.

29. The fact that Mr. McKenna's behavior was not immediately addressed by Human Resources only highlights the fact that Under Armour is not committed to changing its culture. Any Human Resources professional that was sincerely attempting to "move the needle" with regard to the matters reported by the Wall Street Journal would have immediately chastised Mr. McKenna rather than condone his behavior. Again, Under Armour missed an opportunity to send a message that such conduct had no place in the workplace or in society. Under Armour has learned nothing from the #METOO Movement.

30. On Ms. Pajak's next scheduled call that week with Megan McClain, Ms. Pajak brought up the concerns that both Ms. Romero and Ms. Livelsberger had voiced. It was also brought to Ms. Pajak's attention that several of the other female District Managers felt that Mr. McKenna's comments were not appropriate given the gravity of the situation. Ms. McClain was on the call and stated she also felt like it was not the right response and was not aware if it had been addressed or not. The Director of HR and the North America Head of Stores were both on this call so Ms. Pajak surely felt these issues would be addressed properly, but her Senior HR Manager was unaware of any further action several weeks after the call. It is abundantly clear

that the company did not do what is required under the law with respect to the complaints as it did not undertake any investigation or action whatsoever.

31. Under Armour's Human Resources team is culpable in the perpetuation of a work environment hostile towards women. Rather than do what is legally required, the Human Resources professionals who were aware of workplace misconduct turned a blind eye to it.

32. Ms. Pajak's actions outlined above led the company to consider her a trouble maker of some sort and no longer part of the culture that pervaded Under Armour for many years. Ms. Pajak's role in these incidents was only to ensure that she was doing her job by taking these allegations seriously and elevating them to the proper channels for further investigation. She was told each time that these were not issues that she needed to pursue and that it is best that she move on. Unfortunately, Ms. Pajak is not the only woman who has suffered Mr. Boucher's wrath. Mr. Boucher has been instrumental in the termination of a number of women, including women who were higher than he was in the Under Armour organizational chart. These women are cooperative.

33. Under Armour's own Code of Conduct, "Protect This House," purportedly protects employees like Ms. Pajak from retaliation:

HOW TO REPORT

If you see or hear about a situation that may violate our Code, Under Armour policies or the law, you can report it to the highest level of management on your team, the Human Resources Business Partner (HRBP) for your area or any senior leader in the Human Resources organization, or anyone on the Global Ethics & Compliance team.

* * *

NON-RETALIATION

No retaliation will be taken against any teammate for raising an ethical concern, question or complaint in good faith. Should the identity of the teammate making the complaint be known, the Global Ethics & Compliance team will monitor any disciplinary action against the teammate to determine if it is retaliatory. In other words, if you speak up in good faith, you're protected.

34. However, such a policy is just words on a piece of paper because Human Resources Professionals have refused to enforce the policy. Sadly, Ms. Pajak was a victim of unlawful discrimination and retaliatory discharge. After the PIP period expired, Ms. Pajak was summarily fired on December 10, 2018 and offered a severance package of one month's salary. She rejected that severance offer.

35. These are the events that occurred in 2018 that caused immediate strain in Ms. Pajak's working relationship with her direct supervisor, Brian Boucher. In the previous several years that he had been her boss, Ms. Pajak had never had any negative performance reviews, nor was she given any critical feedback that would have even alerted Ms. Pajak that Under Armour was dissatisfied with her job performance. In fact, in her last Performance Evaluation she received on February 26, 2018 (dated March 4, 2018), it stated that her performance "Meets UA High Expectations." The evaluation stated:

Your key strengths are Build a Great Team and Get it Done, Done, Done. You are very driven on sourcing and building the very best team in retail – this shows through in everything you do. You continue to develop strong, sustainable partnerships with TA, L&D and HR to help you in this effort. Finally, you are accountable to yourself, your work and always meeting deadlines. You are a driver – always. You want to win. You own and deliver what you say you will.

Ms. Pajak's Damages

36. As a result of the wrongful and unlawful conduct described above, Ms. Pajak suffered substantial lost income and benefits, and in all reasonable likelihood will continue into the future to lose income and benefits. Ms. Pajak also suffered other consequential damages.

37. Ms. Pajak's damages as a result of her wrongful and retaliatory discharge are significant. Ms. Pajak's Annual Base Salary for 2018 was \$187,460 with a 2018 Bonus opportunity of \$52,489 and a Restricted Stock Unit Value of \$50,000. Additionally, Ms. Pajak's non-economic damages claim will be very substantial, including punitive damages.

38. Ms. Pajak also suffered severe emotional distress and will likely suffer emotional distress in the future, all as a consequence of Defendants' wrongful acts.

39. As a result of the wrongful conduct by Defendants, Ms. Pajak was forced to hire an attorney and incurred and will incur substantial attorneys' fees, expenses, and expert witness fees in connection with prosecuting this case.

40. In the event Ms. Pajak is compensated in this lawsuit for her damages, she will very likely incur adverse tax consequences resulting in part from having to pay taxes on a single lump sum award from this lawsuit for which she will have to pay taxes at higher tax brackets than otherwise would have applied. Ms. Pajak may also suffer a loss of social security benefits, and other tax-related issues.

41. When Ms. Pajak's employment ended on December 10, 2018:

- a. Ms. Pajak was qualified for the position Ms. Pajak had held at the time her employment ended.
- b. Ms. Pajak had been performing her job duties according to her employer's legitimate job expectations.

c. Ms. Pajak had been performing her job in a satisfactory manner.

42. Boucher was Ms. Pajak's supervisor with hiring and firing authority over Ms. Pajak, and Boucher was personally guilty of the conduct creating the unlawful discrimination and retaliatory discharge in issue.

43. Boucher's conduct was imputable to Under Armour because:

- a. Under Armour delegated to Boucher managerial authority to hire and fire Ms. Pajak and to direct the day-to-day details of Ms. Pajak's work duties,
- b. Boucher's misconduct was within the scope of his delegation of authority from Under Armour,
- c. Under Armour had actual knowledge of Boucher's misconduct,
- d. Under Armour ratified Boucher's misconduct, and
- e. Under Armour failed to enforce in good faith and with even minimal diligence any purported policies which could have prevented the misconduct.

CAUSES OF ACTION

First Count: Wrongful Discharge under *Harless*

44. Plaintiff incorporates by reference and reasserts all previous allegations contained in this Complaint as if fully set forth herein.

45. This cause of action is asserted against all Defendants under West Virginia's common law claim for wrongful discharge under *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978).

46. Ms. Pajak is female and suffered retaliation, harassment, and discrimination because of her sex, in that Defendants were guilty of allowing a hostile work environment to occur in Under Armour's workplace.

47. The West Virginia Human Rights Act and other statutes and the common law of West Virginia state a substantial public policy that employees are entitled to be free of retaliation, sexual harassment, sexual discrimination and misconduct in the workplace.

48. As a result of the retaliation, sexual harassment and sex discrimination described above, Ms. Pajak was discharged by Defendants.

49. Ms. Pajak was discharged on December 10, 2018, because she reported sexual misconduct and other workplace misconduct that violated the substantial public policy of West Virginia and Under Armour's own policies.

50. As a result of the actionable conduct by Defendants, Ms. Pajak suffered the damages described above (including past and future lost income and benefits, consequential damages, and emotional distress), and attorneys' fees.

51. Under Armour, Inc., Under Armour Retail, Inc., and Brian Boucher are liable for these damages as joint tortfeasors, and for the reasons set out above.

52. The conduct by Defendants was willful, intentional, malicious, and in conscious and willful disregard of the rights of Ms. Pajak. Ms. Pajak therefore requests punitive damages against Defendants.

Second Count: Violations of the West Virginia Human Rights Act

53. Plaintiff incorporates by reference and reasserts all previous allegations contained in this Complaint as if fully set forth herein.

54. This cause of action is asserted against all Defendants under the West Virginia Human Rights Act.

55. Section 5-11-9 of the West Virginia Human Rights Act states, "It shall be an unlawful discriminatory practice . . . (7) For any person, employer, employment agency, labor

organization, owner, real estate broker, real estate salesman or financial institution to: (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section; (B) Willfully obstruct or prevent any person from complying with the provisions of this article, . . . or (C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.”

56. Ms. Pajak suffered retaliation, harassment, and discrimination based on sex because of her protected activity described above, in that Defendants placed Ms. Pajak on a pretextual performance improvement plan and subsequently discharged her within a short period of time as the result of her protected activity in violation of West Virginia Code Section 5-11-9(7).

57. As a result of the actionable conduct by Defendants, Ms. Pajak suffered the damages described above (including past and future lost income and benefits, consequential damages, and emotional distress), and attorneys’ fees.

58. Under Armour, Under Armour Retail, and Brian Boucher are liable for these damages as joint tortfeasors, and for the reasons set out above.

59. The conduct by Defendants was willful, intentional, malicious, and in conscious and willful disregard of the rights of Ms. Pajak. Ms. Pajak therefore requests punitive damages against Defendants.

Third Count: Negligent Hiring, Supervision, and Retention

60. Plaintiff incorporates by reference and reasserts all previous allegations contained in this Complaint as if fully set forth herein.

61. The Defendants Under Armour and Under Armour Retail negligently and/or recklessly hired and/or supervised and/or retained Defendant Boucher as an employee, agent, and supervisor despite the Defendants' knowledge that Defendant Boucher has repeatedly, intentionally, maliciously and grossly violated Plaintiff's rights as protected under the West Virginia Human Rights Act and other applicable laws.

62. As a direct and proximate result of the Defendants Under Armour and Under Armour Retail's actions, the Plaintiff has been retaliated against by Defendant Boucher, acting on behalf of the Defendants Armour and Under Armour Retail, in violation of the Plaintiff's rights under West Virginia law.

63. As a direct and proximate result of the Defendants' actions, the Plaintiff has suffered, and will continue to suffer, lost wages and benefits in an amount to be determined by the jury.

64. As a direct and proximate result of Defendant Boucher's actions, the Plaintiff is entitled to damages for indignity, embarrassment, humiliation, emotional distress, annoyance and inconvenience in an amount to be determined by the jury.

65. Defendant Boucher's actions were willful and malicious and violated West Virginia law entitling the Plaintiff to attorney fees and costs pursuant to West Virginia Code § 5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

66. The Defendants actions were willful and malicious and violated the West Virginia Human Rights Act, *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d

270, 275 (1978), and *Williamson v. Greene*, 200 W. Va. 421, 423, 490 S.E.2d 23, 25 (1997), entitling the Plaintiff to attorney fees and costs pursuant to the decisions of the West Virginia Supreme Court of Appeals.

Fourth Count: Intentional Infliction of Emotional Distress or Tort of Outrage

67. Plaintiff incorporates by reference and reasserts all previous allegations contained in this Complaint as if fully set forth herein.

68. The Defendants' conduct in effecting the retaliatory discharge, harassment, discrimination, and misconduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

69. Defendants acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from their conduct.

70. These wrongful actions of the Defendants have been done intentionally, maliciously, willfully, wantonly, recklessly, and with utter disregard of the Plaintiff's legal rights.

71. As a direct and proximate result of such wrongful conduct, Plaintiff has suffered and continues to suffer severe emotional distress.

72. As a direct and proximate result of such wrongful and unlawful conduct the Plaintiff has sustained and is thereby entitled to recover such damages as are more fully set forth below.

JURY DEMAND

73. Ms. Pajak requests trial by jury.

PRAYER FOR RELIEF

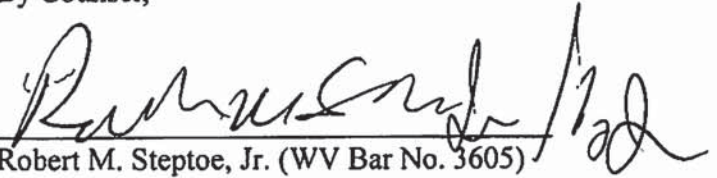
74. Ms. Pajak requests that Defendants be required to appear and answer, and that, upon final hearing, Ms. Pajak have judgment against Defendants, jointly and severally,

- a. for money damages (including compensatory damages, adverse tax consequences, attorneys' fees, expenses, expert witness fees, and punitive damages),
- b. an order of reinstatement if the Court rules it to be appropriate (although Ms. Pajak contends that such reinstatement under the circumstances present in this lawsuit would be futile and inappropriate and subject her to further retaliation),
- c. prejudgment interest as provided for by law,
- d. and such other relief to which Ms. Pajak may be justly entitled.

Dated this 15th day of July, 2019

CYNTHIA D. PAJAK

By Counsel,



Robert M. Steptoe, Jr. (WV Bar No. 3605)

Larry J. Rector (WV Bar No. 6418)

Allison B. Williams (WV Bar No. 11329)

STEPTOE & JOHNSON PLLC

400 White Oaks Boulevard

Bridgeport, WV 26330

(304) 933-8151 (telephone)

(304) 933-8753 (facsimile)

Email: larry.rector@steptoe-johnson.com

Counsel for Plaintiff

FILED IN 15TH
CIRCUIT COURT
2019 JUL 16 A 9:41

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 2019-C-

19-C-183-3

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

CIVIL SUMMONS

TO: Under Armour, Inc.
c/o CT Corporation System
1627 Quarrier Street
Charleston, WV 253112

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Robert M. Steptoe, Jr., Larry J. Rector, Allison B. Williams and Bonnie J. Thomas, Plaintiff's attorneys, whose address is Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, an Answer, including any related Counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this Civil Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by Counterclaim in the above-styled action.

Albert F. Marano
CLERK OF COURT *als*

Dated: 7-16-19

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 2019-C-

19-C-183-3

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

CIVIL SUMMONS

TO: Brian Boucher
52 Overton Road
Windham, NH 03087

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Robert M. Steptoe, Jr., Larry J. Rector, Allison B. Williams and Bonnie J. Thomas, Plaintiff's attorneys, whose address is Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, an Answer, including any related Counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within twenty (20) days after service of this Civil Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by Counterclaim in the above-styled action.

Albert F. Marang
CLERK OF COURT

Dated: 7-16-19

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 2019-C-
19-C-183-3

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

CIVIL SUMMONS

TO: Under Armour Retail, Inc.
c/o Thomas J. Sippel
98 Church Street
Rockville, MD 20850

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Robert M. Steptoe, Jr., Larry J. Rector, Allison B. Williams and Bonnie J. Thomas, Plaintiff's attorneys, whose address is Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, an Answer, including any related Counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this Civil Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by Counterclaim in the above-styled action.

Albert F. Marano *cl*
CLERK OF COURT

Dated: 7-16-19



400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (304) 933-8183 Fax
www.steptoe-johnson.com

Writer's Contact Information

Phone: (304) 933-8151
Fax: (304) 933-8753
E-mail Address:
larry.rector@steptoe-johnson.com

July 31, 2019

Albert Marano, Clerk
Circuit Court of Harrison County
Harrison County Courthouse
301 W. Main Street
Clarksburg WV 26301

Re: Cynthia D. Pajak v. Under Armour, Inc., et al.
Civil Action No. 19-C-183-3

Dear Mr. Marano:

Enclosed please find "*Proof of Service*" in the above-referenced matter. Please mark this document "filed" and place it in the appropriate Court file.

Thank you for your assistance in this matter. If you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Larry J. Rector', written over a horizontal line.

Larry J. Rector

LJR/mal
Enclosure
684160.00001

FILED IN 15TH
CIRCUIT COURT
2019 AUG - 1 P 1:39

8531302.1

Civil Action No.: 19-C-183-3 Harrison County, West Virginia

PROOF OF SERVICE

SERVED DATE: July 24, 2019 at 8:35 a.m.

PLACE: 52 Overton Road, Windham, NH

DOCUMENTS SERVED: Complaint, Civil Case Information Statement, Civil Summons

SERVED ON: Brian Boucher

MANNER OF SERVICE: In hand to wife, Christine

SERVED BY: Ronald Bertheim

TITLE: Process Server

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of New Hampshire that the foregoing information contained in this Proof of Service is true and correct.

Executed on: July 24, 2019


SIGNATURE OF SERVER

252B Pleasant Street, Methuen, MA 01844
ADDRESS OF SERVER


STATE OF ~~NEW HAMPSHIRE~~ Massachusetts
COUNTY OF Essex, to-wit:

The foregoing "Proof of Service" was acknowledged before me this 24th day
of July, 2019, by Ronald Bertheim.

My commission expires: 5/15/16

(NOTARIAL SEAL)


Notary Public
Christine Canup

 **CHRISTINE A. CANUP**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 15, 2026

ATTN: Laurie Smith

FILED
CIRCUIT COURT
2019 AUG - 15 PM 1:39

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



Mac Warner
Secretary of State
State of West Virginia
Phone 304-558-6000
888-767-8683
Visit us online:
www.wvssos.com

Donald L. Kopp
Harrison County Courthouse
301 W. Main St., Suite 301
Clarksburg, WV 26301-2967

IN 15TH
JULY 2019
CLERK OF COURT
P 3:19

Control Number: 242051

Defendant: UNDER ARMOUR, INC.
1627 QUARRIER ST.
CHARLESTON, WV 25311-2124 US

Agent: C. T. Corporation System

County: Harrison

Civil Action: 19-C-183

Certified Number: 92148901125134100002552531

Service Date: 7/18/2019

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. 2019-C-

19-C-183-3

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

CIVIL SUMMONS

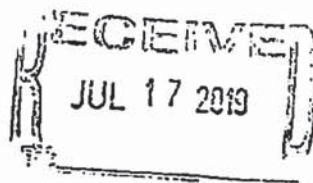
TO: Under Armour, Inc.
c/o CT Corporation System
1627 Quarrier Street
Charleston, WV 253112

ACCEPTED FOR
SERVICE OF PROCESS
2019 JUL 18 P 2:28
CLERK OF COURT
HARRISON COUNTY
WEST VIRGINIA

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Robert M. Steptoe, Jr., Larry J. Rector, Allison B. Williams and Bonnie J. Thomas, Plaintiff's attorneys, whose address is Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, an Answer, including any related Counterclaim you may have, to the Complaint filed against you in the above-styled civil action; a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this Civil Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by Counterclaim in the above-styled action.

Albert F. Marano
CLERK OF COURT *ds*

Dated: 7-16-19





400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (304) 933-8183 Fax
www.steptoe-johnson.com

Writer's Contact Information

Phone: (304) 933-8151
Fax: (304) 933-8753
E-mail Address:
larry.rector@steptoe-johnson.com

August 2, 2019

VIA HAND-DELIVERY

Albert Marano, Clerk
Circuit Court of Harrison County
Harrison County Courthouse
301 W. Main Street
Clarksburg WV 26301

Re: **Cynthia D. Pajak v. Under Armour, Inc., et al.**
Civil Action No. 19-C-183-3

Dear Mr. Marano:

Enclosed please find "***Proof of Service***" in the above-referenced matter. Please mark this document "filed" and place it in the appropriate Court file.

Thank you for your assistance in this matter. If you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Larry J. Rector', written over the typed name.

Larry J. Rector

LJR/mal
Enclosure
684160.00001

FILED IN 15TH
CIRCUIT COURT
2019 AUG - 2 P 3:29

8543061.1

Civil Action No.: 19-C-183-3 Harrison County, West Virginia

PROOF OF SERVICE

SERVED DATE: 7/30/2019 at 3:22pm
PLACE 98 Church Street, Rockville, MD 20850
DOCUMENTS SERVED Complaint, Civil Case Information Statement, Civil Summons
SERVED ON Thomas J Sippel
MANNER OF SERVICE Personal
SERVED BY Louis Jones
TITLE Process Server

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of Maryland that the foregoing information contained in this Proof of Service is true and correct.

Executed on: _____

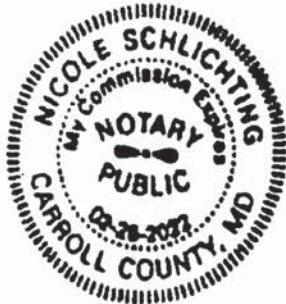
SIGNATURE OF SERVER

205 Town CT Mt Airy MD 21271
ADDRESS OF SERVER

STATE OF MARYLAND,
COUNTY OF Carroll, to-wit:

The foregoing "Proof of Service" was acknowledged before me this 31 day
of July, 2019, by Louis Jones.
My commission expires Feb 25, 2022

NOTARIAL SEAL



Nicole Schlichting
Notary Public

FILED IN 15TH
CIRCUIT COURT
2019 AUG - 2 P 3:22

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CYNTHIA D. PAJAK,

Plaintiff,

v.

CIVIL ACTION NO. _____

UNDER ARMOUR, INC.,
UNDER ARMOUR RETAIL, INC.,
and BRIAN BOUCHER,

Defendants.

DECLARATION OF LOREN PEARL

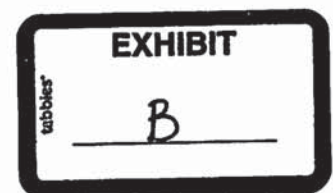
CITY OF BALTIMORE,
STATE OF MARYLAND;

1. My name is Loren Pearl and I am currently employed by Under Armour, Inc. as its Vice President, Global Tax. My business address is 2601 Port Covington Drive, Baltimore, MD 21230.

2. I am over the age of 18 and have personal knowledge of the facts contained in this Declaration or have obtained knowledge of these facts through the regular course of business.

3. Under Armour, Inc. and Under Armour Retail, Inc. are corporations established under the laws of Maryland, and both corporations have their principal places of business located in Baltimore, Maryland.

4. Both Under Armour, Inc. and Under Armour Retail, Inc.'s corporate headquarters and executive offices, where its senior officers direct, control, and coordinate significant corporate decisions, are located in Baltimore Maryland.



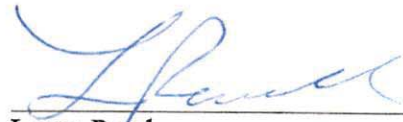
5. Most of Under Armour, Inc. and Under Armour Retail, Inc.'s executive and administrative functions, including corporate finance, payroll, human resources, and information technology, are directed from Baltimore, Maryland. These functions are not located in West Virginia.

6. Under Armour Retail, Inc. does not maintain any retail operations in West Virginia, and only employs a handful of people who live in West Virginia. In 2018, Under Armour Retail, Inc. never employed more than ten employees who lived in West Virginia.

7. Aside from wholesale distribution, Under Armour, Inc. does not have any operations in West Virginia. In 2018, Under Armour, Inc. only employed one person who resided in West Virginia.

8. I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day August, 2019.


Loren Pearl

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Cynthia Pajak

(b) County of Residence of First Listed Plaintiff Harrison
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert M. Steptoe, Jr., Larry J. Rector and Allison B. Williams
Steptoe & Johnson PLLC
400 White Oaks Boulevard, Bridgeport, WV 26330

DEFENDANTS

Under Armour, Inc., Under Armour Retail, Inc. and Brian Boucher

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Justin M. Harrison and Grace E. Hurney
Jackson Kelly PLLC
Post Office Box 553, Charleston, WV 25322

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 and 1441

Brief description of cause:
Retaliatory Discharge

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See Instructions):

JUDGE

DOCKET NUMBER

DATE
08/19/2019SIGNATURE OF ATTORNEY OF RECORD
/s/ Justin M. Harrison (WVSB #9255)

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____